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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*

Note by the secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her official visit to Iraq (14–23 November 2017). The Special Rapporteur examined responses to the multiple violations of the right to life perpetrated, in particular in the context of the conflict that opposed the Iraqi authorities to so-called Islamic State of Iraq and the Levant (ISIL) and other armed groups, as well as official responses to allegations of violations of the right to life by Government and associated forces. The Special Rapporteur focused specifically on steps taken — judicial measures, policies and action implemented — to hold ISIL and other actors to account for these massive and grave violations and formulated a series of recommendations addressed to the Government and other relevant actors.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq**

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** Circulated in the language of submission and Arabic only.

I. Introduction

1. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnès Callamard, visited Iraq from 14 to 23 November 2017. She examined the multiple violations of the right to life perpetrated, in particular in the context of the conflict that opposed the Iraqi authorities to the so-called Islamic State in Iraq and the Levant (ISIL)[1] and other armed groups. Since 1 January 2014, an estimated 30,000 civilians have been killed and another 55,000 injured.[2] She also focused on official responses to these and other violations of the right to life and steps taken - judicial measures, policies and action implemented - to hold all parties to account for massive and grave violations.

2. The Special Rapporteur expresses her appreciation to the Government for its invitation to visit the country, and in particular the Ministry of Foreign Affairs and the Permanent Mission of Iraq to the United Nations in Geneva for their full cooperation in the preparation of and during the visit, and to the officials she met with for their availability and open and frank discussions. She would also like to thank the United Nations Assistance Mission for Iraq (UNAMI) and its Human Rights Office for the invaluable support provided, as well as all the individuals whom she met for sharing their experiences, testimonies and other vital information.

3. During the visit, the Special Rapporteur travelled to Baghdad, Erbil, Najaf and Fallujah. She conducted in situ visits and met with government authorities, including the Prime Minister and representatives of the President of Iraq, the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Defence, the Ministry of Justice; members of the parliament, including its Human Rights and Legal Committees; members of the Judicial High Council; representatives of the Kurdistan Regional Government; as well as political leaders, religious leaders, members of international organizations, legal and medico-legal professionals, journalists, civil society representatives, internally displaced persons and survivors of human rights violations.

4. The Special Rapporteur expresses her deepest condolences to all Iraqis who have lost loved ones and sympathy to all those who have been subjected to other forms of violence. Over the course of the visit, she came to admire the strength and resilience that the Iraqis have shown in the face of severe adversity, including atrocious human rights violations.

II. Historical and political context

5. Iraq has an extremely complex recent and longer history. Iraqi society eludes simple description, with ethnic, tribal and religious identities intersecting and interweaving in complex ways. Over the last 15 years alone, the country has experienced a series of violent conflicts along political and sectarian lines and involving foreign countries and their troops. Regional and international conflicts continue to play out in the country. With the military defeat of ISIL, announced by the Prime Minister on 9 December 2017, a range of challenges overshadowed by the conflict re-emerged. They include long-standing issues resulting from the 1980-1988 war with the Islamic Republic of Iran, the 1990 invasion of Kuwait, the Saddam Hussein regime and its overthrow by the United States-led invasion of 2003, followed by increasingly sectarian conflicts.

6. The country is embarking on a very sensitive transitional phase, with democratic parliamentary elections held on 12 May 2018. Transitional phases, such as the present one, are invariably both complex and fragile. They present an opportunity to break with the past but also pose many risks. Old tensions may arise where they have not been mended,

[1] Or the Islamic State in Iraq and Syria (ISIS), Islamic State (IS) or its Arabic acronym "Daesh".

[2] See www.uniraq.org/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=159&Itemid=633&lang=en

grievances that were set aside during conflict may return and any simmering resentment or deeply felt suffering resulting from the conflict may boil over.

7. Tensions between the Kurdistan Regional Government and the Federal Government, following the Kurdish independence referendum of 25 September 2017, have further complicated this difficult transition. The referendum was declared unconstitutional by the Federal Supreme Court, which led to sanctions by the Federal Government and a military operation. [3] It is encouraging that a dialogue between the Federal and Regional Governments has been re-established.[4]

8. All these dynamics loom large in the justice-deprived landscape of Iraq "post ISIL". A number of critical challenges face the country, including: integrating into the Iraqi Security Forces (ISF) all affiliated forces or disarming them; rebuilding in the wake of massive destruction; undertaking reconciliation measures in areas where mistrust and widespread fear and violence have dominated; and providing justice to the victims and survivors of violations of human rights and humanitarian law, including through accountability, reconciliation and reparation processes.

III. Applicable law

A. International level

1. International human rights law

9. The Special Rapporteur has reviewed and analysed alleged violations of the right to life with reference to international human rights, humanitarian and criminal law, including Conventions ratified by Iraq, and the country's domestic law.

10. Iraq is party to most international human rights treaties relevant to the right to life: the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Elimination of All Forms of Discrimination against Women. Iraq has not acceded to the Optional Protocols to the International Covenant on Civil and Political Rights, one of which aims at the abolition of the death penalty.

11. Two instruments particularly useful in understanding and interpreting human rights obligations in a post-conflict situation are: the updated set of principles for the protection and promotion of human rights through action to combat impunity, which emphasizes the obligation of States to take effective action to combat impunity and investigate, try and punish perpetrators, and to restrict the use of amnesties; and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which obliges States to provide victims with adequate, effective and prompt reparation for such violations.

12. Relevant rules of customary international human rights law are also applicable. In addition, international human rights law applies in times of both peace and armed conflict, and the prohibition of arbitrary deprivation of life is non-derogable.

2. International humanitarian law

13. Iraq is party to the 1949 Geneva Conventions and the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of

[3] The Government provided a divergent analysis (A/HRC/38/44/Add.4, sect. 3).

[4] Security Council briefing, Special Representative for the Secretary-General for Iraq, Ján Kubiš, 20 February 2018.

international armed conflicts (Additional Protocol I), and the Convention on the Prevention and Punishment of the Crime of Genocide. It is not party to the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Additional Protocol II). Iraq is also not signatory to the Rome Statute of the International Criminal Court, nor has it made a declaration accepting the jurisdiction of the Court in relation to the conflict.

14. All parties to non-international armed conflict that meets the threshold of intensity and organization,[5] including armed non-State actors, are bound by common article 3 of the Geneva Conventions, which establishes fundamental rules from which no derogation is permitted. It requires humane treatment for all persons in enemy hands, without any adverse distinction, and specifically prohibits under (1) (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, and under (1) (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees.

15. In addition, all parties, including those that provide air or other support to any of the warring sides, are also bound by other relevant rules of customary law applicable to non-international armed conflicts. They must at all times abide by the principles of distinction, proportionality and precaution in attack, and may not under any circumstance, inter alia, carry out attacks on civilians or civilian objects, wantonly destroy property, plunder or pillage, or use chemical weapons or resort to collective punishment.

16. The Government bears responsibility for all violations of international humanitarian law committed by its armed forces or those acting under its direction or control.[6] Under customary international law, the Government has to investigate all violations of international human rights and humanitarian law, and ensure full reparation for loss or injury caused by the State.[7]

3. Legal framework applicable to ISIL and other armed non-State actors[8]

17. The labelling of armed groups as "terrorist organizations" does not alter the application of international humanitarian law or the obligations placed on the parties to the conflict. As highlighted above, international human rights law continues to apply during armed conflict. While armed opposition groups cannot become parties to international human rights treaties, they are increasingly deemed to be bound by certain international human rights obligations, including, at the minimum, those considered to be peremptory international law (*jus cogens*). The Special Rapporteur has also argued that armed non-State actors are bound by a range of human rights obligations determined by the extent and nature of their capacities to exercise territorial control and governance functions (see A/HRC/38/44). Armed non-State actors, exercising de facto authority over a specific territory as a result of having displaced the legitimate State, are bound by the State's treaty obligations.[9]

18. ISIL waged war on Iraq from 2014 until its defeat in December 2017. At the height of its power, it seized as much as 40 per cent of the territory. It proclaimed itself a caliphate with exclusive theological and political authority over the world's Muslims and saw itself as "an all-encompassing entity, one that eventually is meant to shoulder all the responsibilities of traditional state".[10] In the territories it controlled, the group took on a

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[5] International Committee of the Red Cross (ICRC), 2016 Commentary on the First Geneva Convention, para. 484.

[6] Art. 8 of the articles on responsibility of States for internationally wrongful acts, General Assembly resolution 56/83 of 12 December 2001, annex; ICRC, *Customary International Humanitarian Law, Volume I: Rules*, rule 149.

[7] ICRC, *Customary International Humanitarian Law, Volume I: Rules*, rules 144, 150, 157 and 158. For United Nations practices supporting the obligations of armed groups to make reparations, see also rule 150.

[8] The Government provided a divergent analysis (A/HRC/38/44/Add.4, sect. 1).

[9] See, for instance, A/HRC/8/17, para. 9.

[10] See www.understandingwar.org/report/isis-governance-syria.

range of functions usually associated with the State, including "law and order", the fulfilment of those functions being marred by gross violations. ISIL fighters included not only Iraqis but also foreign fighters, estimated at one point at 5,000, including nationals of Australia, Belgium, France, Germany, Jordan, Libya, the Netherlands, the Russian Federation, Tunisia and the United Kingdom of Great Britain and Northern Ireland. Available evidence indicates that these foreign fighters, some of whom held senior positions in the ISIL hierarchy, have been closely involved in the many crimes committed against the Iraqi people.

Security Council resolution 2379 (2017)

19. Security Council resolution 2379 (2017) established an Investigative Team to support Iraqi efforts to hold ISIL accountable by providing assistance with the collection, preservation and storage of evidence. On 8 February 2018, the Government accepted the terms of reference for this team (S/2018/118), which include "promot[ing] … accountability for acts that may amount to war crimes, crimes against humanity and genocide committed by ISIL (Da'esh) and work[ing] with survivors, in a manner consistent with relevant national laws, to ensure that their interests in achieving accountability for ISIL (Da'esh) are fully recognized" (ibid., para. 13). Iraq has therefore committed itself to prosecuting international crimes, and the international community has committed itself to supporting such efforts. In practice, however, Iraq currently does not have jurisdiction over these crimes (see further chap. V below).

B. National level

20. The right to life is covered by Section Two ("Rights and Liberties") of the Constitution of Iraq. Article 15 provides that, "Every individual has the right to enjoy life, security and liberty. Deprivation and restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority". Furthermore, article 19 (4) guarantees the right to legal representation to all arrested persons during phases of investigation and trial, and article 37 (1) (c) prohibits all forms of psychological, physical torture and inhumane treatment, and states that any confession made under duress may not be relied on in court.

21. The death penalty can be imposed under several laws. It is most frequently applied under the Iraqi Penal Code (No. 111) of 1969 or the Anti-Terrorism Law (No. 13) of 2005. The Iraqi Criminal Procedure Code (No. 23) of 1971 provides a number of procedural guarantees in relation to criminal cases, including those carrying capital punishment. The Kurdistan Region of Iraq enacted Anti-Terrorism Law (No. 3) of 2006, which expired on 18 July 2016.

IV. Conflict-related violations

A. Islamic State of Iraq and the Levant

22. ISIL has committed a range of unspeakable violations of international humanitarian and human rights law against Iraqi civilians as well as members of ISF and affiliated forces in and hors de combat. While the true extent of their horrific acts is yet to be determined, the signs of pain and suffering, like the evidence of physical destruction, are everywhere to see.[11]

23. The group carried out a sustained and deliberate policy of executing civilians as a method of instilling fear, exerting control and taking revenge. They committed mass killings of civilians as part of their combat strategy, including by using them as human shields during fighting. On at least one occasion ISIL issued a fatwa indicating that residents of areas retaken by ISF were "legitimate targets", which was accompanied by

[11] The Government provided additional information (A/HRC/38/44/Add.4, sect. 11).

systematic and direct attacks on civilians.[12] Methods of attacks on civilians by ISIL included shelling, mortar rounds, sniper fire, landmines, car bombs and explosives dropped from drones. In addition, there are reports that ISIL may have employed weaponized chemical agents (chlorine and mustard gas) during attacks in and around Mosul.

24. ISIL imposed strict gender rules for social behaviour for both women and men, torturing and killing those they deemed not in conformity with those rules. The group also created an extensive, hierarchical "court" system,[13] which tried and sentenced civilians with virtually no fair trial guarantees.[14] The group ran detention facilities managed by various entities: the Islamic police, the military police, the morality police, raid squads, and security forces.[15] Each entity had its own conditions and methods of detention and punishment, including torture.[16] The Special Rapporteur believes that the many reported killings and other violations by ISIL are evidence of their systematic persecution of persons based on gender and gender expression, alone or in intersection with other identity markers, including religion and ethnicity.

25. ISIL carried out numerous executions by, inter alia, beheading, hanging, stoning, drowning, shooting, burning and throwing persons off buildings, including following "sentences" issued by ISIL self-appointed courts. Executions were often preceded by enforced disappearances and the perpetrators of the executions included children who, following indoctrination, were forced to function as executioners. The remains of those killed were often put on public display as a warning to others not to oppose ISIL. The unthinkable and horrific examples of these executions of men, women and children are numerous.

26. ISIL targeted specifically those opposing or not aligning themselves with its *Takfiri* doctrines or attempting to flee its rule. Victims included leaders, members of religious and ethnic minorities, members of certain professions, in particular female teachers and doctors, as well as media professionals, lesbian, gay, bisexual, transgender and intersex persons, persons caught smoking or not praying correctly and anyone associated with the Government of Iraq. The Special Rapporteur heard accounts of brutal sexual enslavement, shooting, beheading, stoning and burning to death of men, women and children, including those perceived as lesbian, gay, bisexual, transgender or intersex, simply for defying the rigid gender policies of ISIL.

27. The Special Rapporteur received reports of executions of women carried out by ISIL in areas under its control, some following decisions by ISIL-appointed courts, including the stoning of three women by ISIL in late 2016 in Mosul and Kirkuk on charges of adultery. In one case, it is reported that the actual reason for stoning was the refusal of the victim to marry an ISIL fighter. The public was encouraged to participate in the stoning. Three other women were executed by ISIL in Mosul in August 2016 for their perceived homosexuality. In June 2016, 19 Yazidi women were allegedly burned to death for refusing to have sexual intercourse with ISIL fighters. In September 2016, two female lawyers were shot dead by ISIL in Mosul for carrying out their professional duties in a criminal court. In addition, several reports have emerged of ISIL executing homosexual men by throwing them off buildings, and, if they survived the fall, stoning them to death in a public event. Examples include two men thrown to their deaths in November 2015 in Fallujah and another two men in early 2016 in the cities of Rawah and Tel Afar.

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[12] UNAMI and Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report on the protection of civilians in the context of the Ninewa Operations and the retaking of Mosul City, 17 October 2016–10 July 2017", p. 2.

[13] Charles C. Caris and Samuel Reynolds, "Middle East security report 22: ISIS Governance in Syria", pp. 18-19.

[14] See www.hrw.org/report/2016/05/18/we-feel-we-are-cursed/life-under-isis-sirte-libya.

[15] See www.researchgate.net/publication/319043844_The_ISIS_Prison_System_Its_Structure_Departmental_Affiliations_Processes_Conditions_and_Practices_of_Psychological_and_Physical_Torture.

[16] Ibid.

28. UNAMI and the Office of the United Nations High Commissioner for Human Rights (OHCHR) further reported the drowning of eight civilians put in an iron cage and lowered into a swimming pool at the Jawsaq military base in the Dawasah area of central Mosul in September 2016 for collaborating with ISF and affiliated forces; the public shooting in September 2016 of a 72-year-old man after he told his neighbours that he had dreamed that all black flags (ISIL flags) in Mosul had fallen; and the public beheading of a 58-year-old-man by his son, an ISIL member, in the Dawasah area of central Mosul, in October 2016, for insulting its leader.[17]

B. Government and affiliated forces

29. In the fight against ISIL, ISF received support from a number of affiliated forces, in particular those united under the popular mobilization forces (PMF), sometimes referred to as popular mobilization units. PMF was formed in 2014 after the most senior Shia cleric in Iraq, Grand Ayatollah Ali al-Sistani, issued an edict calling on all able-bodied men to protect the homeland against ISIL. Thousands of Iraqi men joined PMF, both individually and as part of pre-existing armed groups that were deployed to fight against ISIL by their commanders. Together with ISF, they played an important role in the military defeat of ISIL. Government officials indicated to the Special Rapporteur that PMF is fully integrated with State forces and responds to a single chain of command. However, there is a widespread perception that PMF fighters keep an allegiance to their commanders rather than to the Iraqi State.[18] In the future, the vast majority of PMF fighters are to be integrated into the regular Iraqi armed forces.

30. The Government indicated that it has issued clear instructions to all members of ISF and affiliated forces to protect civilians and public and private property. Grand Ayatollah al-Sistani similarly issued a fatwa in 2015 on "Advice and guidance to the fighters on the battlefields". However, the Special Rapporteur received information on a number of violations of international humanitarian and human rights law committed by ISF and affiliated forces between 2014 and 2017 up to the end of the battle for Mosul. These mostly concerned reported acts of revenge in the form of interceptions, enforced disappearances and killings of civilians of the Sunni faith, including internally displaced persons, detainees and children, as well as executions of suspected ISIL fighters hors de combat.

31. Between 9 and 16 June 2014, Iraqi forces reportedly summarily executed 119 Sunni detainees at the Anti-Terrorism (Police) Offices in the cities of Mosul, Tel Afar and Baquba.[19] On 22 August 2014, 44 residents of Bani Wais village belonging to a Sunni tribe were killed at their mosque by armed men, some of whom reportedly wore police uniforms and uniforms of a pro-Government group.[20] On 26 September 2015, between 56 to 70 men belonging to a Sunni tribe from the village of Muqdadiya, Diyala province, were taken by members of ISF and affiliated forces and shortly after found shot dead.

32. On 3 June 2016, members of PMF intercepted thousands of internally displaced persons fleeing an area in the north of Fallujah and separated around 1,300 men and boys from the Al Mahamda tribe.[21] Over a period of several days, they were transferred by buses to unknown locations. Six hundred and five were found to have been transferred to the custody of local officials. An investigative committee set up by local authorities later confirmed 49 dead and 643 remain missing to date. On 17 July 2017, 17 male corpses showing signs of gunshot wounds were discovered in a building west of the old city of

[17] UNAMI/OHCHR, "Human Rights in Iraq: July–December 2016", p. 8.

[18] The Government provided a divergent analysis (A/HRC/38/44/Add.4, sect. 1).

[19] UNAMI/OHCHR, "Human Rights in Iraq: January–June 2014", pp. 4-5; and www.amnesty.org/en/latest/news/2014/06/iraq-testimonies-point-dozens-revenge-killings-sunni-detainees/.

[20] UNAMI/OHCHR, "Protection of civilians in the armed conflict in Iraq: 6 July–10 September 2014", p. 20.

[21] UNAMI/OHCHR, "Protection of Civilians in the Armed Conflict in Iraq: 1 November 2015–30 September 2016", p. 19.

Mosul. ISF and members of the Iraqi Terrorism Service had been seen in the area four nights prior to the discovery and gunshots had been heard.[22]

C. Coalition Forces

33. Coalition Forces operating under the United States-led Combined Joint Task Force/Operation Inherent Resolve have been active in the fight against ISIL in Iraq and the Syrian Arab Republic since their establishment in October 2014. They have provided air support to military operations carried out by ISF and affiliated forces on several occasions resulting in an unknown — but believed to be high — number of civilian casualties.

34. According to their own estimates, at least 841 civilians have been unintentionally killed by Coalition strikes since the start of the operation, with 485 cases still inconclusive.[23] Airstrikes conducted as part of the battle against ISIL in Mosul (and involving the Iraqi Air Force) caused a significant part of that number. The total number of civilian casualties from airstrikes during the whole campaign for Mosul was reported at 1,091.[24] Of this number, the Coalition stated responsibility for 295 deaths. However, there are indications that the actual number of civilian casualties caused by the battle for Mosul between October 2016 and July 2017 is much higher, at around 10,000, of which at least 3,200 are alleged to have been caused by Coalition Forces.

35. In one single airstrike alone, conducted in Western Mosul on 17 March 2017 targeting two ISIL snipers, a high number of civilians were killed. An investigation launched by the Iraqi authorities and Coalition Forces found that at least 105 civilians had been killed and 36 remained unaccounted for. Witness statements indicated that victims had been forcibly placed in the building by ISIL fighters. The investigation found ISIL had placed explosive materials in the structure of the building and that this in part caused the high number of casualties.[25]

D. Kurdistan region

36. The Kurdistan region is host to a large internally displaced population, which significantly increased during the battle for Mosul when residents were forced to flee en masse to save their lives. During the screening process at checkpoints, meant to separate civilians from possible combatants, boys and men have faced particular scrutiny. It is reported that they faced arbitrary arrests by Kurdish security forces and in some cases were forcibly disappeared. There are also reports of retaliatory attacks by Kurdish security forces and associated Peshmerga and Yazidi armed groups against Sunni Arab civilians and their property following the recapture of territory.[26] Dozens of juveniles remain detained by the Kurdish authorities under the counter-terrorism regime, which, due to a lack of procedural guarantees, places them at risk of human rights violations, including death in detention. This risk is increased by the severely limited access of local and international organizations to detention facilities, rendering monitoring of the situation almost impossible.

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[22] On 5 January 2018, the Special Rapporteur sent a follow-up letter containing summaries of this and other cases to the Government requesting detailed information on investigations conducted, and outcomes, if any. No response had been received at the time of finalization of the present report.

[23] See www.inherentresolve.mil.

[24] UNAMI/OHCHR, "Report on the protection of civilians in the context of the Ninewa Operations and the retaking of Mosul City: 17 October 2016-10 July 2017", p. 9.

[25] Ibid. pp. 37-38.

[26] UNAMI/OHCHR, "Human Rights in Iraq: July–December 2016", p. 5, and "Protection of Civilians in the Armed Conflict in Iraq: 1 November 2015–30 September 2016", p. 17.

V. Other violations of the right to life

A. Killings of journalists and other media professionals[27]

37. The Special Rapporteur was informed of several attacks on journalists and media professionals in recent years, including threats, intimidation, physical assaults and killings, in particular in the Kurdistan region of Iraq. Concerns were voiced by several interlocutors that the number of attacks appeared to be on the rise and the Special Rapporteur heard that shortly before her visit, on 30 October 2017, Arkan Sharifi, a cameraman for Kurdistan TV, was stabbed to death in front of his family in Daquq. She also received information on similar cases dating back to 2010, including Kawa Ahmed Germyani, who was shot dead in Kalar on 5 December 2013, and Sardasht Osman, who was kidnapped on 3 May 2010 in Erbil and later found dead.

38. A notable case raised with the authorities by the mandate holder prior to the visit,[28] as well as by UNAMI/OHCHR,[29] is that of Widad Hussein (sometimes written as Widat Hussein). Mr. Hussein, a correspondent with Rozh News agency in the Dohuk Governate, was reportedly abducted on 13 August 2016 and found dead the same day in the Malta district of Dohuk with his body showing clear marks of torture. In response, the Kurdistan Regional Government authorities indicated that a commission of inquiry had been established and that investigations into the case were ongoing. No additional information had been provided at the time of finalization of the present report.[30]

39. Concerns raised focused in particular on the reported lack of effective investigations into the killings of Kurdish journalists and media professionals, and little or no accountability for those killings. This impunity has led to an overall mistrust in the criminal justice system and in turn increased fear among the media community of continuing their critical reporting. This fear is heightened by their impression that the powerful figures who were the subject of criticism by the deceased journalists might be behind their killings and may even enjoy the protection of the justice system.

B. Killings of women and girls (honour killings)[31]

40. The Special Rapporteur also focused on the issue of honour killings, meaning the arbitrary deprivation of life of women and girls (but possibly also men and boys) by (male) family members or tribal members, because they are deemed to have brought shame or "dishonour" on the family or tribe. While the scale of honour killings is unknown due to severe underreporting, the latest estimate indicates that several hundreds of girls and women become victims of honour killings in Iraq each year (A/HRC/30/66, para. 28). The Special Rapporteur was informed that this issue affects all parts of the country, cutting through religious and ethnic divides, with a strong tribal element and linked with the country's strong patriarchal society.

41. Iraq lacks proper legislation to prevent and punish honour killings. Article 409 of the Penal Code permits "honour" as mitigation for crimes of violence committed against family members. In that connection, while sexual assault is criminalized, article 398 of the Penal Code provides that charges may be dropped if the assailant marries the victim. It appears that this provision can also be applied in cases where the victim is a minor.[32] This creates a nightmare "catch 22" type situation whereby the victim risks her life either way: if she marries her assailant she may become a victim of lethal domestic violence and, if she does not, she may fall victim to honour killing by her family or tribe. The Special Rapporteur

[27] The Government provided additional information (A/HRC/38/44/Add.4, sect. 12).
[28] Communication dated 15 March 2017, AL IRQ 1/2017.
[29] UNAMI/OHCHR, "Report on human rights in Iraq: January–June 2017", p. 20, and UNAMI/OHCHR, "Report on human rights in Iraq: July to December 2016", p. 36.
[30] Kurdistan Regional Government response to AL IRQ 1/2017 (26 January 2018).
[31] The Government provided additional information (A/HRC/38/44/Add.4, sect. 17).
[32] OHCHR/UNAMI, "Report on human rights in Iraq: January to June 2017", p. 12.

heard of cases where the sentence for honour killing was reduced to one or two years in prison, including suspended sentences.

42. The Kurdistan Regional Government passed a law in 2004 prohibiting mitigated sentences for perpetrators of honour crimes. It has also enacted a separate piece of legislation, the Law for Combatting Domestic Violence in the Kurdistan Region — Iraq (No. 8) of 2011, which includes in its definition of domestic violence not only acts of physical violence but also the marriage of minors. The Special Rapporteur learned that a draft amendment remains pending before the Kurdistan Regional Government Parliament and that parts of it need to be brought into line with international standards. Furthermore, the Special Rapporteur heard of a range of measures taken to strengthen investigations into honour killings in the Kurdistan region, including obligatory forensic investigations into all reported deaths of women.

43. To protect the growing number of women and girls fleeing domestic violence and the threat of honour killings, there is a desperate need for more shelters. At the federal level, while the Government does not permit non-governmental organizations to run shelters, some do in practice, often at very high risk. The Special Rapporteur was alarmed to discover that the few organizations providing such shelters — filling a gap due to a lack of publicly funded shelters — are targeted and stigmatized, their offices raided by police and their staff intimidated and threatened by various actors. In the Kurdistan region, although such organizations are permitted to run shelters, it appears that the authorities have denied licences to organizations intending to establish private shelters, citing accusations of encouraging prostitution.

44. The safeguards against arbitrary deprivation of life apply to killings by non-State actors. Iraq incurs international responsibility when it fails to act with due diligence to prevent, investigate, punish and offer reparations for honour killings. In this regard, the mitigating effect of article 409 of the Penal Code may be seen as an almost complete failure to punish honour killings resulting in impunity for such acts. The lack of a proper legislative framework — coupled with the harassment of those working to protect women and girls against honour killings and the absence of authorization to run shelters — indicates that the State is not only failing to act with due diligence; it is failing to respect women's right to life.

C. Killings of lesbian, gay, bisexual, transgender and intersex persons[33]

45. The Special Rapporteur also received information on incitement to hatred through traditional and social media, and attacks, including threats, physical assaults and killings, of men and boys on the basis of their actual or perceived sexual orientation or gender identity, as well as of activists and organizations supporting the human rights of lesbian, gay, bisexual, transgender and intersex persons. A notable example is the killing of Karar Noushi, actor and model, in Baghdad on 2 July 2017. The Government indicated that, in response to these killings, a committee had been established dedicated to this issue. It is, however, unclear to the Special Rapporteur which results, if any, it has yielded. There is further fear that, with the military victory over ISIL, attention may again turn towards those perceived as engaging in "immoral" activities and attacks on the lesbian, gay, bisexual, transgender and intersex community may increase.

[33] The Government provided additional information (A/HRC/38/44/Add.4, sect. 18).

VI. Transitional justice[34]

A. Accountability

1. ISIL fighters

46. The Government has embarked on a large judicial endeavour to hold ISIL fighters to account for massive violations of human rights and humanitarian law, primarily using the Anti-Terrorism Law. At the time of the visit, in Mosul alone, 4,383 alleged ISIL members were detained, 2,019 detainees had been sent to Baghdad and 1,004 released. A total of 413 investigations had been completed and sent to the courts. In the view of the Special Rapporteur, the reliance on this law raises a range of serious problems.

47. First, the Anti-Terrorism Law itself is both vague and overly broad. It encompasses serious and petty crimes, ranging from killings to vandalism. The list of crimes for which the death penalty is not only applicable but mandatory is extensive and includes acts whose gravity fall below the threshold of "most serious crimes" necessary to impose such a sentence under international norms. Its definition of terrorism is not in line with the International Convention for the Suppression of the Financing of Terrorism that Iraq ratified in 2012. In addition, the Criminal Procedure Code appears to be set aside for those charged under the Anti-Terrorism Law, which means that defendants are denied their fair trial rights and due process guarantees. This includes the right to be informed upon arrest of the reasons therefor and the charges brought, access to legal representation from the moment of arrest, the right to have arrest and detention status reviewed by an independent and competent judge in a timely manner,[35] and the prohibition of torture to extract a confession.[36]

48. Second, as presented above, ISIL fighters have perpetrated serious and systematic human rights violations, including war crimes, crimes against humanity and possibly genocide in the territories it controlled and beyond. The investigation and prosecution of these crimes require an appropriate legal framework. The Special Rapporteur does not believe that the Anti-Terrorism Law was designed to respond to such international crimes.

49. To date, the Penal Code does not include provisions covering international crimes. This means that Iraqi courts do not have jurisdiction over the crimes of genocide, war crimes or crimes against humanity committed within its territory. The gravity of the crimes committed by ISIL requires that the federal and regional authorities amend domestic legislation to ensure jurisdiction over international crimes. The people of Iraq, the victims and survivors of the conflict, deserve a legal framework and a judicial response that properly reflect the nature of the crimes committed, which are on a par with atrocity crimes investigated and tried in other parts of the world.

50. In the Kurdistan region, the Commission for Investigation and Gathering of Evidence was established under the High Committee for the Identification of Genocide Crimes and has documented atrocity crimes committed by ISIL. Their documentation efforts have not led to judicial processes or outcomes from a lack of an appropriate legal framework which would permit the issuance of arrest warrants and charging of alleged perpetrators. The Yazidi community is waiting for a "special court" to be established so that perpetrators of crimes — war crimes, crimes against humanity and possibly genocide — against members of that community can be held to account. To allow for such an outcome, the Kurdistan Regional Government must also undertake urgent legal reforms aiming at integrating international crimes within the domestic system.

51. The absence of steps taken by the Government to incorporate international crimes in its domestic legislation is all the more problematic in view of the terms of reference of the

[34] The present chapter should be read in conjunction with A/HRC/36/50, paras. 20-21.

[35] Extended detention is also a result of interaction between article 109 of the Criminal Procedure Code and the Anti-Terrorism Law.

[36] The Government provided a divergent analysis (A/HRC/38/44/Add.4, sects. 4 and 6).

Investigative Team set up pursuant to Security Council resolution 2379 (2017). According to these terms of reference, accepted by the Government of Iraq on 8 February 2018 (S/2018/118) and subsequently approved by the Security Council on 13 February 2018, the Investigative Team is mandated to "collect evidence pertaining to acts that may amount to war crimes, crimes against humanity and genocide" (ibid., para. 5). Furthermore, the evidence collected by the Team may only be used in fair and independent criminal proceedings conducted by competent domestic courts in Iraq, and in third States (ibid., para. 26).

52. The Special Rapporteur is deeply concerned that this resolution will be meaningless if the crimes that are to be investigated and prosecuted do not exist under the Iraqi domestic legal framework. She is also concerned by the apparent acquiescence of the international community to this legal and political hiatus.

53. In addition, she warns against the use of any and all evidence collected, preserved or stored by the Investigative Team for trial in domestic courts that could result in the application of the capital punishment, in violation of relevant international standards.

54. The Special Rapporteur is aware of an UNAMI proposal for the establishment of Iraqi specialized criminal courts to try the most serious crimes and for the incorporation of international crimes into the domestic legal system, which would enable the courts to exercise jurisdiction over these crimes at the federal and Kurdistan regional levels. The Special Rapporteur urges the Government and Parliament of Iraq to review and adopt the necessary legal reform to hold those responsible accountable and provide remedies and reparations to the victims or their family members.[37]

55. As highlighted in her end-of-mission statement,[38] the Special Rapporteur also regrets that resolution 2379 (2017) limits assistance to the investigation of crimes committed by one party only (i.e. ISIL). Given the crucial need to build trust among all ethnic and religious groups in Iraq, any accountability effort must be conducted according to the principle of impartiality and address the grievances of all groups and individuals affected by human rights violations and atrocity crimes.[39]

2. Government and affiliated forces[40]

56. A particular onus is therefore placed on the Iraqi State to investigate all allegations of violations of international human rights and humanitarian law committed by its own forces, hold perpetrators to account and provide remedies and reparations to the victims or their families. This obligation must be implemented openly and transparently. The Special Rapporteur encourages the international community to support the Government in conducting the necessary efforts to document and investigate all alleged crimes committed by other parties to the conflict, including ISF and affiliated forces, as well as Coalition Forces.

57. The authorities have on a number of occasions acknowledged violations committed by ISF and affiliated forces and announced investigations into above-mentioned and other cases. On 22 October 2014, the Ministry of the Interior stated that an investigative committee set up to look into the attack on Bani Wais village had identified three suspects. On 6 June 2016, following the events north of Fallujah of 3 June involving the separation of around 1,300 boys and men, and subsequent confirmed deaths of 49 and disappearance of 643 of them, the Prime Minister announced the establishment of a committee to investigate "any violations of the instructions on the protection of civilians" and issued "strict orders" to hold accountable those responsible for any violations. On 18 July 2017, in relation to the battle for Mosul, the Office of the Prime Minister acknowledged that violations by ISF had occurred, stating that these were individual acts and that punishment would be sought for the perpetrators (S/2017/881, para. 56). On 17 August 2017, Iraqi authorities announced

[37] The Government provided additional information (A/HRC/38/44/Add.4, sect. 7).

[38] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22452&LangID=E.

[39] The Government provided a divergent analysis (A/HRC/38/44/Add.4, sect. 20).

[40] The Government provided additional information (A/HRC/38/44/Add.4, sects. 8 and 10).

that investigations into violations reported by international media had found that some alleged violations had indeed occurred and stated that the alleged perpetrators had been referred to the judiciary.[41]

58. The Special Rapporteur was informed that these and other steps towards ensuring accountability have been taken, including the establishment of a directorate for security and discipline, staffed with investigators, and a detention centre in Baghdad, holding up to 200 members of affiliated forces accused of various crimes. However, it is unclear how effective these accountability mechanisms and the investigations conducted to date are, as it appears that no legal proceedings have been opened in any of the above-mentioned or other reported cases. It is further unclear how individual members of ISF and affiliated forces, as well as their superiors, if command responsibility can be established, will be held to account for such violations under the current domestic legal framework.

3. Death penalty[42]

59. Iraq maintains the capital punishment and continues to implement it to date. The Kurdistan Regional Government, while also maintaining capital punishment, seemed to have established a de facto moratorium on executions since 2008. However, it was breached on two occasions in 2015 and 2016 with three executions. Both the Federal and Regional Governments cited popular pressure as a reason to continue to apply/resume the death penalty, in particular in response to crimes committed by ISIL.

60. The death penalty is most frequently applied under the Penal Code and the Anti-Terrorism Law. Both impose the capital punishment for a range of crimes, not all of which satisfy international requirements that limit its application to premeditated murder only. Crimes punishable by the death penalty under the Anti-Terrorism Law include participation in an armed terrorist gang; assault with firearms or use of explosive and incendiary devices designed to kill with a terrorist motive; and kidnapping or impeding the freedoms of individuals. Mitigating circumstances, i.e. the accused provides information leading to the prevention of another terrorist act or apprehension of further suspects, may apply, in which case sentencing is reduced to life imprisonment (art. 5).

61. The Criminal Procedure Code provides a number of procedural guarantees, including the right of the accused to legal representation starting before questioning (art. 123) and the prohibition of, inter alia, mistreatment, threats, injury or psychological pressure to influence the accused or extract a confession (art. 127). The death penalty may not be imposed on juvenile offenders, i.e. minors or those aged between 18 and 21 at the time of the commission of the alleged crime, or on pregnant women and women up to four months after giving birth (arts. 79 of the Penal Code and 287 A of the Criminal Procedure Code).[43] In such cases the death penalty may be commuted to life imprisonment.[44] The method of execution is by hanging (art. 288).

62. The Kurdistan Regional Government enacted its own piece of counter-terrorism legislation, the Anti-Terrorism Law (No. 3) of 2006, which expired on 18 July 2016. Similar to the federal version, it imposed mandatory death sentences for a number of crimes, not all of which constitute "most serious crimes". The Special Rapporteur was informed that the main body of law to be applied in terrorism cases now is the Penal Code. However, concerns have been raised that the expired law continues to be applied to crimes alleged to have been committed before the law expired, which covers the majority of alleged ISIL crimes.

63. On 17 December 2017, the recently reconvened Kurdistan Parliament ratified the General Amnesty Law in Kurdistan Region (No. 4) of 2017. The Amnesty Law provides for the reduction of sentences for convicted persons and persons currently being tried for offences that took place prior to the enactment of the law. Persons already sentenced to

[41] UNAMI/OHCHR, "Report on Human Rights in Iraq: January–June 2017", p. 2.

[42] The Government provided a divergent analysis (A/HRC/38/44/Add.4, sect. 19).

[43] UNAMI/OHCHR, "Report on the death penalty in Iraq", October 2014, p. 10.

[44] Ibid.

death will have their sentences reduced to 15 years in prison if reconciliation is reached with the victims. Some categories of convicted persons, where reconciliation has been reached, may be released immediately, while the sentences of convicted persons where reconciliation has not been reached may be reduced by 30 or 40 per cent (20 per cent for drug-related crimes and sexual abuse). There are also benefits for convicted persons evading arrest and those who have served their sentences but cannot pay their restitution. In the Amnesty Law, it is specified that the Law does not apply to certain categories of crimes, including those relating to national security, the crimes of repeat offenders, some financial crimes, and the rape and torture of children.

64. The Special Rapporteur is concerned at the lack of openness from the Federal Government on judicial proceedings and the use of the death penalty. She was informed that, since 2015, no information has been made public on the number, charges and trials of detainees sentenced to death, remaining on death row or executed. The latest numbers released by the authorities in August 2014 indicated that 1,724 prisoners were on death row (excluding the Kurdistan region).[45] However, this number has likely increased exponentially due to the defeat of ISIL, with large numbers of fighters being captured and undergoing trial.

65. The authorities assured the Special Rapporteur that capital punishment is only imposed after a series of legal checks, including an automatic appeal procedure for all death penalty cases, and that, if any miscarriage of justice is found to have occurred at any stage of the proceedings, the case is automatically re-tried.

66. However, the Special Rapporteur is alarmed by the mass executions reported since 2016 and fears that this has become the modus operandi, in particular, in dealing with ISIL and terrorism cases. Recent examples include 38 men hanged in Nasiriya, southern Iraq, on 14 December, and 42 detainees hanged in the same city on 24 September 2017. All had been convicted on terrorism-related charges. Moreover, on 23 January 2017, 23 convicts were executed for their alleged involvement in the Camp Speicher case.[46] On 21 August 2016, 36 men had reportedly been executed in relation to that case.

67. The Special Rapporteur was also made aware of a large number of allegations regarding violations of fair trial and due process guarantees in death penalty cases. These include, in particular, sentencing based mainly or solely on confessions obtained under torture or duress,[47] lack of judicial investigation into allegations of torture during the investigation phase and swift trials resulting in mass executions.

68. The Special Rapporteur concludes that existing procedural guarantees to ensure fair trials either are not implemented in practice or have proven insufficient to protect against abuses of due process rights, resulting in systematic violations of the right to life. She reiterates her call to the Government to establish an official moratorium on the death penalty.

B. Documenting, investigating and preserving evidence of violations[48]

69. In post-conflict situations, "if formal institutional mechanisms ... are not able to deliver results at the scale that cases call for, other forms of intervention can provide recognition to victims and promote social integration".[49] The Special Rapporteur welcomes ongoing efforts to document the range of violations committed during the recent conflict but fears that these are insufficient. The Federal Government to date has not initiated any documentation efforts based on the safe participation of all victims. With the support of international actors and civil society, it should take steps to establish a documentation/truth-seeking process to collect testimonies and evidence. This process may or may not include

[45] Ibid., p. 21.
[46] UNAMI/OHCHR, "Human rights in Iraq: January–June 2014", p. 4.
[47] See also CCPR/C/IRQ/CO/5, paras. 27-28.
[48] The Government provided additional information (A/HRC/38/44/Add.4, sects. 8, 13-14).
[49] A/HRC/36/50, para. 72.

the preparation of case files so that formal investigations could proceed at a later date and formal accountability be delivered.

70. While the Government, including federal, regional and local officials, is ultimately responsible for transitional justice, a range of other actors can play a crucial role in ensuring these obligations are effectively and peacefully implemented. Religious and tribal leaders in particular must take stock of the transitional challenges, present and forthcoming, and respond accordingly, providing guidance to their members and followers, grounded in the foremost necessities of justice, reconciliation, peace and security. Almost three years ago, on 12 February 2015, Grand Ayatollah al-Sistani issued a fatwa on "Advice and guidance to the fighters on the battlefields", calling on all fighters to respect international humanitarian law principles. The new transitional phase demands of all religious leaders in Iraq that they exercise similar foresight and positive influence over the behaviour of all actors, at national and local level, and support reconciliation and transitional justice efforts.

71. A positive example of documenting atrocity crimes committed since 2014 is the Commission for Investigation and Gathering of Evidence of the Kurdistan Regional Government (see also para. 50 above). The Commission, headed by an investigative judge, has documented a multitude of crimes committed by ISIL, including mass killings, disappearances, sexual violence, enslavement, and use of child soldiers, through interviewing dozens of survivors and witnesses, excavating mass graves and conducting other forensic investigations. In doing so, they have been able to identify a range of perpetrators. However, the prosecution thereof will depend on the establishment of a proper legal framework integrating measures against international crimes within the domestic system of both the Federal and Regional Governments.

72. The United Nations Development Programme has also set up a project supporting reconciliation efforts in Iraq, which will include the establishment of a three-fold mechanism, including a citizens' archive for gross human rights violations, with recommendations for follow-up. The project, to be implemented throughout the country in 2018 and 2019, will involve collecting and documenting victims and survivors' testimonies about the violations they endured and witnessed.

C. Certificates of absence[50]

73. During the most recent conflict, thousands of men, women and children from all communities have been forcibly disappeared, the vast majority of whom remain unaccounted for. Within the Yazidi community alone, an estimated 6,450 persons are missing with most feared killed and placed in unmarked individual or mass graves. In and around Fallujah, individual women interviewed by the Special Rapporteur have lost up to 15 male members of their immediate families, including their husband, sons and brothers, the youngest being 13 or 14 years old. Those left behind are facing extreme hardship as a result, including for having lost their main breadwinners.

74. The uncertainty about the fate of these persons causes relentless suffering to their relatives. Knowing what happened to the disappeared is critical for relatives, their communities and Iraq as a whole to be at peace. Getting to the truth will require concerted efforts in tracing the missing, which sadly will need to include the excavation of mass graves.

75. Other pressing needs related to the missing, include legal and financial needs. According to government officials, Iraqi law provides for something amounting to a "certificate of absence", which is issued by a judge on the basis of a police report and valid for three years, after which a death certificate may be issued. Families also have the right to compensation or reparation for the disappearance of their relatives.

76. However, based on information received during the visit, it appears that these certificates may be withheld from families of disappeared suspected ISIL members,

[50] The Government provided additional information (A/HRC/38/44/Add.4, sect. 16).

including those who went missing after surrendering to ISF or affiliated forces. The Special Rapporteur wishes to stress that all families of the disappeared should be provided with certificates of absence. Responsibility for crimes committed by ISIL members should not be extended to their families, who should not be deprived of minimum survival requirements. A certificate of absence is often the first step towards accessing essential services.

D. Management of mass graves[51]

77. As a result of the mass killings that Iraq experienced during Saddam Hussein's regime, the sectarian violence that followed, and the widespread violence committed by ISIL, the bodies of an estimated 1 million persons are buried in hundreds of mass graves across the country. Some 114 mass graves, linked to the most recent conflict, have been discovered so far in areas previously under the control of ISIL, containing the bodies of an unknown number of individuals. Exhumations have been carried out at some sites, including for the mass killing of 1,700 air force cadets at Camp Speicher in Salah ad Din province in June 2014, but many other sites remain to be examined. The identification, protection and adequate management of all mass grave sites is essential for truth, justice and reconciliation efforts.

78. The excavation and identification of victims, including through DNA analysis, is being carried out by the Medico-Legal Institute, the Mass Grave Department, the Martyrs Foundation, and the Ministry of Martyrs and Anfal Affairs in Kurdistan, with the support of, among others, the International Commission on Missing Persons and ICRC. Their commitment and professionalism, despite vast challenges, are admirable. Many mass grave sites lack the necessary protection, leaving them exposed to damage by the elements and are subject to uncontrolled excavations. There are limited adequate storage systems and facilities. Staff lack basic equipment, such as gloves and bleach. Insufficient DNA testing facilities slow down the identification of bodies.

79. Professionals of the Medico-Legal Institute calculate that, at the current pace, it will take over 800 years to complete their task. Families cannot wait that long for identification of their missing relatives, and neither can accountability for violations committed. Supporting the Iraqi institutions responsible for the mass graves must therefore be an absolute priority for Iraq and the international community. Additional training, equipment and funds, including greater capacities for DNA testing, tracing and storage, are required to accelerate and strengthen the processes of discovery, exhumation and identification.

VII. Conclusions and recommendations

A. Conclusions

80. **For decades the people of Iraq have experienced horrendous violations of the right to life, which have been met with impunity. The Government of Iraq is now in a position to resolutely turn its back on previous practices, and initiate a truly protective and participatory transitional justice process that will put an end to impunity for crimes committed against all communities. This requires solid investigations into all allegations of war crimes, crimes against humanity, and genocide. While there is no doubt that ISIL and its fighters have perpetrated the most serious crimes, for which they must be held to account, other parties to the conflict must equally face justice for their crimes. These include Government and affiliated forces as well as Coalition Forces.**

81. **The people of Iraq, the victims and survivors of the conflict, deserve a legal framework and a judicial response that properly reflect the nature of the crimes committed, which are on par with atrocity crimes investigated and tried in other parts**

[51] The Government provided additional information (A/HRC/38/44/Add.4, sects. 5 and 9).

of the world. The Anti-terrorism Law is not appropriate to address the crimes committed, hold those responsible to account or provide victims with the remedies and reparations to which they are entitled. Investigations into gender-based persecution and crimes, alone or in intersection with religion and ethnicity, must be prioritized.

82. **The current legal and political hiatus related to the implementation of Security Council resolution 2379 (2017) must thus be promptly addressed. This requires urgent legal reforms to give Iraqi courts jurisdiction over international crimes. In view of the repeated evidence of miscarriages of justice, the Government must at the same time take all necessary steps to address widespread reports of violations of fair trial and due process guarantees, including torture to obtain confessions, and establish an official moratorium on the death penalty.**

83. **Article 409 of the Penal Code, which mitigates penalties for honour killings, must be amended. Non-governmental organizations providing shelter to women and girls fleeing gender-based threats to their life must be provided with the necessary protection and immediate (legal) steps must be taken to provide those organizations with the necessary licences to carry out their work. Due diligence measures should, in addition, be applied to other individuals and groups at risk, including journalists and media professionals, and lesbian, gay, bisexual, transgender and intersex persons.**

B. Recommendations

84. **The Special Rapporteur recommends that the Government of Iraq:**

Post-conflict reforms

(a) **Ratify the Rome Statute of the International Criminal Court;**

(b) **Accede to the Optional Protocols to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture;**

(c) **Incorporate into domestic legislation war crimes, crimes against humanity, genocide and establish specialized court(s) with technical capacities and jurisdiction over these crimes;**

(d) **Repeal the Anti-Terrorism Law (No. 13) of 2005 and, pending legal reforms, charge individuals for the full range of crimes committed under the Penal Code;**

(e) **Undertake security sector reform, with human rights and the protection of the right to life at the forefront;**

(f) **Place all security forces under the control of the Government, especially in liberated and disputed areas, or disarm and disband them;**

Accountability

(g) **Ensure that all parties to the conflict are held to account for their crimes, including ISIL but also Government and affiliated forces, and Coalition Forces;**

ISIL fighters

(h) **Prioritize prosecutions of ISIL suspects responsible for the most serious crimes and consider alternatives to criminal prosecution for those suspected of ISIL membership without evidence of any other serious crime;**

(i) **Ensure that detention of ISIL suspects is carried out pursuant to the Criminal Procedure Code, with a court-ordered arrest warrant and detainees being brought before a judge within 24 hours;**

(j) Provide access to all places of detention of alleged ISIL fighters and members, including women and children, to independent monitors and national and international (non-governmental) organizations;

(k) Ensure that all child detainees are held in appropriate juvenile facilities, separate from adults;

(l) Notify families of the whereabouts of detained relatives;

(m) Create a specialized court for dealing with juvenile alleged ISIL members;

(n) Put an immediate end to swift trials and mass executions under the Anti-Terrorism Law;

(o) Ensure that victims, including women and children, are heard throughout criminal proceedings;

Government and affiliated forces

(p) Investigate and prosecute perpetrators of reported attacks by pro-Government forces on civilians in Mosul and other families, including arbitrary killings and forced disappearances, alleged to have relatives who are affiliated to or members of ISIL, as well as reports of destruction of civilian property;

(q) Make public all investigations carried out so far into above-mentioned and other attacks on civilians, especially those conducted by ad hoc committees, with due concern to the protection of survivors;

Death penalty

(r) Establish a moratorium on the use of the death penalty;

(s) Pending abolition, undertake an independent and comprehensive review of all relevant legislation to bring it into compliance with international human rights law and standards related to capital punishment, in particular its mandatory nature for certain crimes;

(t) Ensure that the death penalty is not imposed on persons below the age of 18;

(u) Ensure full application of the Vienna Convention on Consular Relations in death penalty cases involving foreign nationals;

(v) The Kurdistan Regional Government should adopt a formal moratorium on the use of the death penalty and conduct a comprehensive review of all relevant legislation with a view to repealing it;

Victim-centred transitional justice mechanisms

(w) Develop a transitional justice strategy, consisting of identifying priorities and mechanisms of investigation, prosecution and reparation, including to address stigma;

(x) Document all violations of the right to life, war crimes and crimes against humanity committed in Iraq against all groups and individuals, by all perpetrators without exception;

(y) Ensure a victim-centred approach to justice, including through actively soliciting victim and witness participation in trials, supporting their participation, ensuring confidentiality of information and data, and providing witness protection programmes where necessary;

(z) Develop truth-telling and truth-seeking processes and institutions with the authority to address violations committed by all sides to the conflict, including by issuing subpoena to garner testimony and witnesses;

(aa) **Provide certificates of absence to all families of the disappeared, irrespective of their alleged affiliation to ISIL;**

(bb) **Implement the recommendations of the Special Rapporteur on minority issues (A/HRC/34/53/Add.1) and Special Rapporteur on the human rights of internally displaced persons (A/HRC/32/35/Add.1);**

Management of mass graves

(cc) **Develop the technical capacity of Iraqi institutions and put in place a sustainable process of locating, recovering and identifying the disappeared, with the support of international organizations;**

(dd) **At local and national level, with local and religious leaders, engage with families of the disappeared to raise understanding of the complexity of mass grave management and identification of the bodies; and develop proposals aimed at recognizing and respecting the plight of the families involved while protecting mass grave sites;**

(ee) **Invest in and develop storage spaces and capacities to hold and keep remains that have been excavated, to ensure respect and identification; and ensure all bodies currently in mortuaries are properly handled and not forgotten;**

(ff) **Ensure all exhumations are part of a well thought-out plan of action, including mechanisms to work with families and professional analysis of the remains;**

(gg) **Invest in building the capacities of national actors to respond to the mass graves crisis, with the support of international (non-governmental) organizations;**

Protection of persons at risk

(hh) **Amend article 409 of the Penal Code;**

(ii) **Revise the draft Family Protection Law to include measures to prevent sexual and gender-based violence, protect survivors, and ensure accountability of perpetrators in compliance with international standards, and ensure its earliest adoption;**

(jj) **Protect and provide accommodation and dignified living conditions to women and children fleeing gender-based violence, including in shelters;**

(kk) **Fully recognize the work of non-governmental organizations providing shelters and related services; protect these organizations, their staff and the individuals staying in shelters, including their children, from attacks and harassment by Government and non-Government actors;**

(ll) **Collect comprehensive information on and document human rights violations against women and lesbian, gay, bisexual, transgender and intersex persons in all parts of Iraq, and publicize government reports to raise awareness about the magnitude of these violations in the country;**

(mm) **Investigate all allegations of gender-based persecution and crimes, including gender-based killings, and train and strengthen capacities accordingly;**

(nn) **Conduct proper investigations and prosecute all those responsible for attacks against, and killings of, lesbian, gay, bisexual, transgender and intersex persons, including by members of Government and affiliated forces as well as armed non-State actors;**

(oo) **Implement national policies to end the endorsement of and participation in violence or discrimination against anyone, including lesbian, gay, bisexual, transgender and intersex persons, by government officials, including the police and ISF;**

(pp) **Work with Iraqi rights-based organizations to provide human rights training and education to ISF and the police in order to combat violence and discrimination based on real or perceived sexual orientation and gender identity;**

(qq) **Protect journalists and media professionals from attacks, including by setting up relevant protection programmes and investigating all deaths of such persons and prosecuting alleged perpetrators regardless of their status or functions.**

85. **The Special Rapporteur recommends that religious and community leaders:**

(a) **Speak up, through fatwas, Friday prayers or other relevant directives, against ethnic and religious intolerance and gender-based discrimination and violence, and support reconciliation measures, address mistrust and fear and denounce revenge and retaliations;**

(b) **Advocate for the integration of all the affiliated forces and fighters into a united ISF.**

86. **The Special Rapporteur recommends that international actors:**

(a) **Endorse the recommendations in the present report and advocate for their implementation by the Federal Government and/or the Kurdistan Regional Government;**

(b) **Provide technical, financial and strategic support to the relevant authorities to support the implementation of recommendations related to criminal legal reforms, ratification of international treaties, accountability for crimes committed by ISIL and all other parties to the conflict, transitional justice, and gender-based crimes;**

(c) **Urge Iraqi authorities to ensure that all defendants, including foreign nationals, have access to consular services and legal representation, receive a fair trial with their due process rights met, and do not receive the death penalty;**

(d) **Individual Member States should address current accountability deficits for ISIL crimes and, under the principle of universal jurisdiction, prosecute perpetrators currently in their country's territory under the appropriate international legal framework, including for war crimes, crimes against humanity or genocide; and undertake active investigations into gender-based persecution and crimes, in order to hold those responsible to account;**

(e) **States members of the Coalition Forces should undertake an independent evaluation into the impact of their aerial bombardments and other military operations in terms of civilian casualties and report publicly and transparently about the findings.**

87. **The Special Rapporteur recommends that the Investigative Team established under Security Council resolution 2379 (2017):**

(a) **Address the gap between the objectives of the resolution and the Iraqi legal framework, and urge and support the Federal Government and the Kurdistan Regional Government to incorporate international crimes into national legislation and support the establishment of specialized court(s);**

(b) **Urge the Government of Iraq to allow the Investigative Team to broaden its investigations to include violations by all sides to the conflict, including Coalition Forces;**

(c) **Ensure that evidence collected, preserved or stored by the Team is not used in trials that could lead to the application of the death penalty.**

88. **The Special Rapporteur recommends that the Office of the Prosecutor of the International Criminal Court consider undertaking investigations into foreign fighters who have held high-level ISIL positions and who are nationals of countries that have ratified the Rome Statute, for crimes within the jurisdiction of the Court.**